

REED SMITH LLP

Formed in the State of Delaware

David G. Murphy, Esq.

Diane A Bettino, Esq.

599 Lexington Avenue, 22nd Floor

New York, New York 10022

Tel. (212) 521-5400

Fax (212) 521-5450

dmurphy@reedsmith.com

Attorneys for Defendant Wells Fargo Bank, N.A.

**UNITED STATES DISTRICT COURT
SOUTHERN OF NEW YORK**

GLENN C. ELFE,

Plaintiff,

vs.

26 MOTORS CORP., JOHN DOE #1 a/k/a
“KYLE”, JOHN DOE #2 a/k/a “CHINO”, JOHN
DOE #3 a/k/a MANAGER, WELLS FARGO
BANK, N.A., L.J. MARCHESE CHEVROLET,
INC., and MICHELLE BAILEY,

Defendants.

Civil Action No. 1:22-cv-09385

Document Electronically Filed

**WELLS FARGO BANK, N.A.’S ANSWER,
AFFIRMATIVE DEFENSES, AND
CROSSCLAIM TO SECOND AMENDED
COMPLAINT**

Defendant Wells Fargo Bank, N.A. (“Defendant” or “Wells Fargo”) by and through its counsel, Reed Smith LLP, and by way of answer (“Answer”) to the Second Amended Complaint (“Complaint”) filed by plaintiff Glenn Elfe (“Plaintiff”), states as follows:

INTRODUCTION

1. Admitted that Plaintiff initiated this action but denied that Plaintiff is entitled to relief against Wells Fargo.

PARTIES

2. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs.

3. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs.

4. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs.

5. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs. To the extent the allegations in Paragraph 5 of the Complaint state legal conclusions, no response is required.

6. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs.

7. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs.

8. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs.

9. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs.

10. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs.

11. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs.

12. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs.

13. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs.

14. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs.

15. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs.

16. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs.

17. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs. To the extent the allegations in Paragraph 17 of the Complaint state legal conclusions, no response is required.

18. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs. To the extent the allegations in Paragraph 18 of the Complaint state legal conclusions, no response is required.

19. Admitted.

20. Admitted.

21. Admitted.

22. Admitted. The referenced documents speak for themselves.

23. Denied. To the extent the allegations in Paragraph 23 of the Complaint state legal conclusions, no response is required.

24. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs.

25. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs. To the extent the allegations in Paragraph 25 of the Complaint state legal conclusions, no response is required.

26. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs.

27. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs. To the extent the allegations in Paragraph 27 of the Complaint state legal conclusions, no response is required.

28. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs.

29. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs. To the extent the allegations in Paragraph 29 of the Complaint state legal conclusions, no response is required.

30. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs.

31. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs. To the extent the allegations in Paragraph 31 of the Complaint state legal conclusions, no response is required.

JURISDICTION AND VENUE

32. Admitted.

33. Admitted.

34. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs. To the extent the allegations in Paragraph 34 of the Complaint state legal conclusions, no response is required.

35. Defendant is without information sufficient to form a response to the allegations in this paragraph, therefore, the allegations are denied and Plaintiff is left to his proofs. To the extent the allegations in Paragraph 35 of the Complaint state legal conclusions, no response is required.

36. Admitted.

37. Admitted.

38. Admitted.

FACTS

39. Defendant is without information sufficient to form a response to the allegations in Paragraphs 39 of the Complaint.

40. Defendant is without information sufficient to form a response to the allegations in Paragraph 40 of the Complaint.

41. Defendant is without information sufficient to form a response to the allegations in Paragraph 41 of the Complaint.

42. Defendant is without information sufficient to form a response to the allegations in Paragraph 42 of the Complaint.

43. Defendant is without information sufficient to form a response to the allegations in Paragraph 43 of the Complaint.

44. Defendant is without information sufficient to form a response to the allegations in Paragraph 44 of the Complaint.

45. Defendant is without information sufficient to form a response to the allegations in Paragraph 45 of the Complaint.

46. Defendant is without information sufficient to form a response to the allegations in Paragraph 46 of the Complaint.

47. Defendant is without information sufficient to form a response to the allegations in Paragraph 47 of the Complaint.

48. Defendant is without information sufficient to form a response to the allegations in Paragraph 48 of the Complaint.

49. Defendant is without information sufficient to form a response to the allegations in Paragraph 49 of the Complaint.

50. Defendant is without information sufficient to form a response to the allegations in Paragraph 50 of the Complaint.

51. Defendant is without information sufficient to form a response to the allegations in Paragraph 51 of the Complaint.

52. Defendant is without information sufficient to form a response to the allegations in Paragraph 52 of the Complaint.

53. Defendant is without information sufficient to form a response to the allegations in Paragraph 53 of the Complaint.

54. Defendant is without information sufficient to form a response to the allegations in Paragraph 54 of the Complaint.

55. Defendant is without information sufficient to form a response to the allegations in Paragraph 55 of the Complaint.

56. Defendant is without information sufficient to form a response to the allegations in Paragraph 56 of the Complaint. To the extent the allegations in Paragraph 56 of the Complaint concern certain documents, those documents speak for themselves and Defendant leaves Plaintiff is left to his proofs.

57. Admitted.

58. Defendant is without information sufficient to form a response to the allegations in Paragraph 58 of the Complaint.

59. Defendant is without information sufficient to form a response to the allegations in Paragraph 59 of the Complaint.

60. Defendant is without information sufficient to form a response to the allegations in Paragraph 60 of the Complaint.

61. Defendant is without information sufficient to form a response to the allegations in Paragraph 61 of the Complaint.

62. Defendant is without information sufficient to form a response to the allegations in Paragraph 62 of the Complaint.

63. Defendant is without information sufficient to form a response to the allegations in Paragraph 63 of the Complaint.

64. Defendant is without information sufficient to form a response to the allegations in Paragraph 64 of the Complaint.

65. Defendant is without information sufficient to form a response to the allegations in Paragraph 65 of the Complaint.

66. Defendant is without information sufficient to form a response to the allegations in Paragraph 66 of the Complaint. To the extent the allegations in Paragraph 66 of the Complaint

concern certain documents, those documents speak for themselves and Defendant leaves Plaintiff to his proofs.

67. Defendant is without information sufficient to form a response to the allegations in Paragraph 67 of the Complaint.

68. Defendant is without information sufficient to form a response to the allegations in Paragraph 68 of the Complaint.

69. Defendant is without information sufficient to form a response to the allegations in Paragraph 69 of the Complaint.

70. Defendant is without information sufficient to form a response to the allegations in Paragraph 70 of the Complaint.

71. Defendant is without information sufficient to form a response to the allegations in Paragraph 71 of the Complaint.

72. Defendant is without information sufficient to form a response to the allegations in Paragraph 72 of the Complaint.

73. Defendant is without information sufficient to form a response to the allegations in Paragraph 73 of the Complaint.

74. Defendant is without information sufficient to form a response to the allegations in Paragraph 74 of the Complaint.

75. Defendant is without information sufficient to form a response to the allegations in Paragraph 75 of the Complaint.

76. Defendant is without information sufficient to form a response to the allegations in Paragraph 76 of the Complaint.

77. Defendant is without information sufficient to form a response to the allegations in Paragraph 77 of the Complaint.

78. Defendant is without information sufficient to form a response to the allegations in Paragraph 78 of the Complaint. To the extent this paragraph contains allegations of wrongdoing against Wells Fargo, they are denied.

79. Defendant is without information sufficient to form a response to the allegations in Paragraph 79 of the Complaint.

80. Defendant is without information sufficient to form a response to the allegations in Paragraph 80 of the Complaint.

81. Defendant is without information sufficient to form a response to the allegations in Paragraph 81 of the Complaint. To the extent the allegations in Paragraph 81 of the Complaint concern certain documents, those documents speak for themselves and Defendant leaves Plaintiff to his proofs.

82. Defendant is without information sufficient to form a response to the allegations in Paragraph 82 of the Complaint.

83. Defendant is without information sufficient to form a response to the allegations in Paragraph 83 of the Complaint. To the extent the allegations in Paragraph 83 of the Complaint concern certain documents, those documents speak for themselves and Defendant leaves Plaintiff to his proofs.

84. Defendant is without information sufficient to form a response to the allegations in Paragraph 84 of the Complaint. To the extent the allegations in Paragraph 84 of the Complaint concern certain documents, those documents speak for themselves and Defendant leaves Plaintiff to his proofs.

85. Defendant is without information sufficient to form a response to the allegations in Paragraph 85 of the Complaint.

86. Defendant is without information sufficient to form a response to the allegations in Paragraph 86 of the Complaint.

87. Defendant is without information sufficient to form a response to the allegations in Paragraph 87 of the Complaint.

88. Defendant is without information sufficient to form a response to the allegations in Paragraph 88 of the Complaint.

89. Defendant is without information sufficient to form a response to the allegations in Paragraph 89 of the Complaint.

90. Defendant is without information sufficient to form a response to the allegations in Paragraph 90 of the Complaint.

91. Defendant is without information sufficient to form a response to the allegations in Paragraph 91 of the Complaint.

92. Defendant is without information sufficient to form a response to the allegations in Paragraph 92 of the Complaint.

93. Defendant is without information sufficient to form a response to the allegations in Paragraph 93 of the Complaint.

94. Defendant is without information sufficient to form a response to the allegations in Paragraph 94 of the Complaint.

95. Defendant is without information sufficient to form a response to the allegations in Paragraph 95 of the Complaint.

96. Defendant is without information sufficient to form a response to the allegations in Paragraph 96 of the Complaint.

97. Defendant is without information sufficient to form a response to the allegations in Paragraph 97 of the Complaint.

98. Defendant is without information sufficient to form a response to the allegations in Paragraph 98 of the Complaint.

99. Defendant is without information sufficient to form a response to the allegations in Paragraph 99 of the Complaint.

100. Defendant is without information sufficient to form a response to the allegations in Paragraph 100 of the Complaint. To the extent the allegations in Paragraph 100 of the Complaint state legal conclusions, no response is required.

101. Defendant is without information sufficient to form a response to the allegations in Paragraph 101 of the Complaint. To the extent the allegations in Paragraph 101 of the Complaint concern certain documents, those documents speak for themselves and Defendant leaves Plaintiff to their proofs.

102. Defendant is without information sufficient to form a response to the allegations in Paragraph 102 of the Complaint. To the extent the allegations in Paragraph 102 of the Complaint state legal conclusions, no response is required.

103. Defendant is without information sufficient to form a response to the allegations in Paragraph 103 of the Complaint. To the extent the allegations in Paragraph 103 of the Complaint state legal conclusions, no response is required.

104. Defendant is without information sufficient to form a response to the allegations in Paragraph 104 of the Complaint. To the extent the allegations in Paragraph 104 of the Complaint state legal conclusions, no response is required.

105. Defendant is without information sufficient to form a response to the allegations in Paragraph 105 of the Complaint. To the extent the allegations in Paragraph 105 of the Complaint state legal conclusions, no response is required.

106. Defendant is without information sufficient to form a response to the allegations in Paragraph 106 of the Complaint. To the extent the allegations in Paragraph 106 of the Complaint state legal conclusions, no response is required.

107. Defendant is without information sufficient to form a response to the allegations in Paragraph 107 of the Complaint.

108. Denied as stated and as vague, as “RISC” is not defined or specified. Admitted that Wells Fargo is an assignee in this matter.

109. Denied as stated and as vague, as “loan documents” are not defined or specified. Admitted that Wells Fargo is an assignee in this matter.

110. Denied. To the extent the allegations in Paragraph 110 of the Complaint state legal conclusions, no response is required. To the extent the allegations in Paragraph 110 of the Complaint concern certain documents, those documents speak for themselves and Defendant leaves Plaintiff to their proofs.

111. Defendant is without information sufficient to form a response to the allegations in Paragraph 111 of the Complaint. To the extent the allegations in Paragraph 111 of the Complaint state legal conclusions, no response is required.

112. Defendant is without information sufficient to form a response to the allegations in Paragraph 112 of the Complaint. To the extent the allegations in Paragraph 112 of the Complaint state legal conclusions, no response is required.

113. Defendant is without information sufficient to form a response to the allegations in Paragraph 113 of the Complaint.

114. Defendant is without information sufficient to form a response to the allegations in Paragraph 114 of the Complaint.

115. Defendant is without information sufficient to form a response to the allegations in Paragraph 115 of the Complaint.

116. Defendant is without information sufficient to form a response to the allegations in Paragraph 116 of the Complaint. To the extent the allegations in Paragraph 107 of the Complaint state legal conclusions, no response is required.

117. Defendant is without information sufficient to form a response to the allegations in Paragraph 117 of the Complaint.

118. Defendant is without information sufficient to form a response to the allegations in Paragraph 118 of the Complaint. To the extent the allegations in Paragraph 118 of the Complaint state legal conclusions, no response is required.

119. Defendant is without information sufficient to form a response to the allegations in Paragraph 119 of the Complaint.

120. Defendant is without information sufficient to form a response to the allegations in Paragraph 120 of the Complaint. To the extent the allegations in Paragraph 120 of the Complaint state legal conclusions, no response is required.

121. Defendant is without information sufficient to form a response to the allegations in Paragraph 121 of the Complaint. To the extent the allegations in Paragraph 121 of the Complaint state legal conclusions, no response is required.

122. Defendant is without information sufficient to form a response to the allegations in Paragraph 122 of the Complaint. To the extent the allegations in Paragraph 123 of the Complaint state legal conclusions, no response is required.

123. Defendant is without information sufficient to form a response to the allegations in Paragraph 123 of the Complaint.

124. Defendant is without information sufficient to form a response to the allegations in Paragraph 124 of the Complaint.

125. Defendant is without information sufficient to form a response to the allegations in Paragraph 125 of the Complaint. To the extent the allegations in Paragraph 125 of the Complaint state legal conclusions, no response is required.

126. Defendant is without information sufficient to form a response to the allegations in Paragraph 126 of the Complaint. To the extent the allegations in Paragraph 126 of the Complaint state legal conclusions, no response is required.

127. Defendant is without information sufficient to form a response to the allegations in Paragraph 127 of the Complaint. To the extent the allegations in Paragraph 127 of the Complaint state legal conclusions, no response is required.

128. Defendant is without information sufficient to form a response to the allegations in Paragraph 128 of the Complaint. To the extent the allegations in Paragraph 128 of the Complaint state legal conclusions, no response is required.

COUNT I

Fair Credit Reporting Act Violations by 26 Motors

129. Defendant repeats and realleges the same responses to the enumerated allegations contained in the above paragraphs of the Complaint, and incorporates them with the same force and effect as if set forth specifically herein.

130. This Count is not directed against Wells Fargo, thus no response is required. To the extent Wells Fargo is alleged of committed wrongdoing, denied.

131. This Count is not directed against Wells Fargo, thus no response is required. To the extent Wells Fargo is alleged of committed wrongdoing, denied.

132. This Count is not directed against Wells Fargo, thus no response is required. To the extent Wells Fargo is alleged of committed wrongdoing, denied.

133. This Count is not directed against Wells Fargo, thus no response is required. To the extent Wells Fargo is alleged of committed wrongdoing, denied.

COUNT II

Equal Credit Opportunity Act Violations by 26 Motors

134. Defendant repeats and realleges the same responses to the enumerated allegations contained in the above paragraphs of the Complaint, and incorporates them with the same force and effect as if set forth specifically herein.

135. This Count is not directed against Wells Fargo, thus no response is required. To the extent Wells Fargo is alleged of committed wrongdoing, denied.

136. This Count is not directed against Wells Fargo, thus no response is required. To the extent Wells Fargo is alleged of committed wrongdoing, denied.

137. This Count is not directed against Wells Fargo, thus no response is required. To the extent Wells Fargo is alleged of committed wrongdoing, denied.

COUNT III

Violations of MVRISA, N.Y. PERS. PROP. LAW §§ 301-16

138. Defendant repeats and realleges the same responses to the enumerated allegations contained in the above paragraphs of the Complaint, and incorporates them with the same force and effect as if set forth specifically herein.

139. This Count is not directed against Wells Fargo, thus no response is required. To the extent Wells Fargo is alleged of committed wrongdoing, denied.

140. This Count is not directed against Wells Fargo, thus no response is required. To the extent Wells Fargo is alleged of committed wrongdoing, denied.

141. This Count is not directed against Wells Fargo, thus no response is required. To the extent Wells Fargo is alleged of committed wrongdoing, denied.

142. This Count is not directed against Wells Fargo, thus no response is required. To the extent Wells Fargo is alleged of committed wrongdoing, denied.

143. This Count is not directed against Wells Fargo, thus no response is required. To the extent Wells Fargo is alleged of committed wrongdoing, denied.

144. This Count is not directed against Wells Fargo, thus no response is required. To the extent Wells Fargo is alleged of committed wrongdoing, denied.

145. This Count is not directed against Wells Fargo, thus no response is required. To the extent Wells Fargo is alleged of committed wrongdoing, denied.

146. This Count is not directed against Wells Fargo, thus no response is required. To the extent Wells Fargo is alleged of committed wrongdoing, denied.

147. This Count is not directed against Wells Fargo, thus no response is required. To the extent Wells Fargo is alleged of committed wrongdoing, denied.

148. This Count is not directed against Wells Fargo, thus no response is required. To the extent Wells Fargo is alleged of committed wrongdoing, denied.

149. This Count is not directed against Wells Fargo, thus no response is required. To the extent Wells Fargo is alleged of committed wrongdoing, denied.

150. Denied.

COUNT IV

Common Law Fraud Violations Against All Defendants

151. Defendant repeats and realleges the same responses to the enumerated allegations contained in the above paragraphs of the Complaint, and incorporates them with the same force and effect as if set forth specifically herein.

152. Defendant is without information sufficient to form a response to the allegations in Paragraph 152 of the Complaint. To the extent the allegations in Paragraph 152 of the Complaint state legal conclusions, no response is required.

153. Defendant is without information sufficient to form a response to the allegations in Paragraph 153 of the Complaint. To the extent the allegations in Paragraph 153 of the Complaint state legal conclusions, no response is required.

154. Defendant is without information sufficient to form a response to the allegations in Paragraph 154 of the Complaint. To the extent the allegations in Paragraph 154 of the Complaint state legal conclusions, no response is required.

155. Defendant is without information sufficient to form a response to the allegations in Paragraph 155 of the Complaint. To the extent the allegations in Paragraph 155 of the Complaint state legal conclusions, no response is required.

156. Defendant is without information sufficient to form a response to the allegations in Paragraph 156 of the Complaint. To the extent the allegations in Paragraph 156 of the Complaint state legal conclusions, no response is required.

157. Defendant is without information sufficient to form a response to the allegations in Paragraph 157 of the Complaint. To the extent the allegations in Paragraph 157 of the Complaint state legal conclusions, no response is required

158. Defendant denies the allegations in Paragraph 158 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 158 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 158 of the Complaint state legal conclusions, no response is required.

159. Defendant denies the allegations in Paragraph 159 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 159 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 159 of the Complaint state legal conclusions, no response is required.

160. Defendant denies the allegations in Paragraph 160 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 160 of the Complaint asserting allegations against

other defendants. To the extent the allegations in Paragraph 160 of the Complaint state legal conclusions, no response is required.

161. Defendant denies the allegations in Paragraph 161 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 161 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 161 of the Complaint state legal conclusions, no response is required.

162. Denied.

COUNT V

Declaratory Relief against 26 Motors, Marchese, and Wells Fargo

163. Defendant repeats and realleges the same responses to the enumerated allegations contained in the above paragraphs of the Complaint, and incorporates them with the same force and effect as if set forth specifically herein.

164. Denied.

COUNT VI

Breach of Warranty As to 26 Motors and Marchese and Wells Fargo

165. Defendant repeats and realleges the same responses to the enumerated allegations contained in the above paragraphs of the Complaint, and incorporates them with the same force and effect as if set forth specifically herein.

166. Defendant is without information sufficient to form a response to the allegations in Paragraph 166 of the Complaint. To the extent the allegations in Paragraph 166 of the Complaint state legal conclusions, no response is required.

167. Defendant is without information sufficient to form a response to the allegations in Paragraph 167 of the Complaint. To the extent the allegations in Paragraph 167 of the Complaint state legal conclusions, no response is required.

168. Defendant is without information sufficient to form a response to the allegations in Paragraph 168 of the Complaint. To the extent the allegations in Paragraph 168 of the Complaint state legal conclusions, no response is required.

169. Defendant is without information sufficient to form a response to the allegations in Paragraph 169 of the Complaint. To the extent the allegations in Paragraph 169 of the Complaint state legal conclusions, no response is required.

170. Defendant is without information sufficient to form a response to the allegations in Paragraph 170 of the Complaint. To the extent the allegations in Paragraph 170 of the Complaint state legal conclusions, no response is required. To the extent the allegations in Paragraph 170 of the Complaint concern certain documents, those documents speak for themselves and Defendant leaves Plaintiff to their proofs.

171. Defendant is without information sufficient to form a response to the allegations in Paragraph 171 of the Complaint. To the extent the allegations in Paragraph 171 of the Complaint state legal conclusions, no response is required.

172. Defendant is without information sufficient to form a response to the allegations in Paragraph 172 of the Complaint. To the extent the allegations in Paragraph 172 of the Complaint state legal conclusions, no response is required.

173. Defendant is without information sufficient to form a response to the allegations in Paragraph 173 of the Complaint. To the extent the allegations in Paragraph 173 of the Complaint state legal conclusions, no response is required.

174. Defendant is without information sufficient to form a response to the allegations in Paragraph 174 of the Complaint. To the extent the allegations in Paragraph 174 of the Complaint state legal conclusions, no response is required.

175. Denied.

COUNT VII

Violations of New York General Business Law § 349
by Marchese, 26 Motors, Kyle, Bailey, Chino, Manager, and Wells Fargo

176. Defendant repeats and realleges the same responses to the enumerated allegations contained in the above paragraphs of the Complaint, and incorporates them with the same force and effect as if set forth specifically herein.

177. To the extent the allegations in Paragraph 177 of the Complaint state legal conclusions, no response is required.

178. Defendant is without information sufficient to form a response to the allegations in Paragraph 178 of the Complaint. To the extent the allegations in Paragraph 178 of the Complaint state legal conclusions, no response is required.

179. Defendant is without information sufficient to form a response to the allegations in Paragraph 179 of the Complaint. To the extent the allegations in Paragraph 179 of the Complaint state legal conclusions, no response is required.

180. Defendant is without information sufficient to form a response to the allegations in Paragraph 180 of the Complaint. To the extent the allegations in Paragraph 180 of the Complaint state legal conclusions, no response is required.

181. Defendant is without information sufficient to form a response to the allegations in Paragraph 181 of the Complaint. To the extent the allegations in Paragraph 181 of the Complaint state legal conclusions, no response is required.

182. Defendant is without information sufficient to form a response to the allegations in Paragraph 182 of the Complaint. To the extent the allegations in Paragraph 182 of the Complaint state legal conclusions, no response is required.

183. Defendant is without information sufficient to form a response to the allegations in Paragraph 183 of the Complaint. To the extent the allegations in Paragraph 183 of the Complaint state legal conclusions, no response is required.

184. Defendant is without information sufficient to form a response to the allegations in Paragraph 184 of the Complaint. To the extent the allegations in Paragraph 184 of the Complaint state legal conclusions, no response is required.

185. Defendant denies the allegations in Paragraph 185 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 185 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 185 of the Complaint state legal conclusions, no response is required.

186. Defendant is without information sufficient to form a response to the allegations in Paragraph 186 of the Complaint. To the extent the allegations in Paragraph 186 of the Complaint state legal conclusions, no response is required.

187. Defendant denies the allegations in Paragraph 187 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 187 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 187 of the Complaint state legal conclusions, no response is required.

188. Denied.

189. Denied.

COUNT VIII

Violations of N.Y. Gen. Bus. Law § 350 (False Advertising)

190. Defendant repeats and realleges the same responses to the enumerated allegations contained in the above paragraphs of the Complaint, and incorporates them with the same force and effect as if set forth specifically herein.

191. To the extent the allegations in Paragraph 191 of the Complaint state legal conclusions, no response is required.

192. Defendant is without information sufficient to form a response to the allegations in Paragraph 192 of the Complaint. To the extent the allegations in Paragraph 192 of the Complaint state legal conclusions, no response is required.

193. Defendant is without information sufficient to form a response to the allegations in Paragraph 193 of the Complaint. To the extent the allegations in Paragraph 193 of the Complaint state legal conclusions, no response is required.

194. Defendant is without information sufficient to form a response to the allegations in Paragraph 194 of the Complaint. To the extent the allegations in Paragraph 176 of the Complaint state legal conclusions, no response is required.

195. Defendant is without information sufficient to form a response to the allegations in Paragraph 195 of the Complaint. To the extent the allegations in Paragraph 195 of the Complaint state legal conclusions, no response is required.

196. Denied.

COUNT IX

Aiding and Abetting by all Defendants

197. Defendant repeats and realleges the same responses to the enumerated allegations contained in the above paragraphs of the Complaint, and incorporates them with the same force and effect as if set forth specifically herein.

198. Defendant denies the allegations in Paragraph 198 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 198 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 198 of the Complaint state legal conclusions, no response is required.

199. Defendant denies the allegations in Paragraph 199 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 199 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 199 of the Complaint state legal conclusions, no response is required.

200. Defendant denies the allegations in Paragraph 200 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 200 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 200 of the Complaint state legal conclusions, no response is required.

201. Defendant denies the allegations in Paragraph 201 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 201 of the Complaint asserting allegations against

other defendants. To the extent the allegations in Paragraph 201 of the Complaint state legal conclusions, no response is required.

202. Defendant denies the allegations in Paragraph 202 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 202 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 202 of the Complaint state legal conclusions, no response is required.

203. Denied.

COUNT X

Civil Conspiracy by All Defendants

204. Defendant repeats and realleges the same responses to the enumerated allegations contained in the above paragraphs of the Complaint, and incorporates them with the same force and effect as if set forth specifically herein.

205. Defendant denies the allegations in Paragraph 205 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 205 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 205 of the Complaint state legal conclusions, no response is required.

206. Defendant denies the allegations in Paragraph 206 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 206 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 206 of the Complaint state legal conclusions, no response is required.

207. Defendant denies the allegations in Paragraph 207 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 207 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 207 of the Complaint state legal conclusions, no response is required.

208. Defendant denies the allegations in Paragraph 208 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 208 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 208 of the Complaint state legal conclusions, no response is required.

209. Defendant denies the allegations in Paragraph 209 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 209 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 209 of the Complaint state legal conclusions, no response is required.

210. Defendant denies the allegations in Paragraph 210 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 210 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 210 of the Complaint state legal conclusions, no response is required.

211. Denied.

Count Six¹
Piercing the Corporate Veil

¹ Plaintiff labels Count Eleven as Count Six in his Second Amended Complaint and begins his numbered paragraphs at paragraph 70.

70. Defendant repeats and realleges the same responses to the enumerated allegations contained in the above paragraphs of the Complaint, and incorporates them with the same force and effect as if set forth specifically herein.

71. Defendant denies the allegations in Paragraph 71 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 71 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 71 of the Complaint state legal conclusions, no response is required.

72. Defendant denies the allegations in Paragraph 72 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 72 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 72 of the Complaint state legal conclusions, no response is required.

73. Defendant denies the allegations in Paragraph 73 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 73 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 73 of the Complaint state legal conclusions, no response is required.

74. Defendant denies the allegations in Paragraph 74 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 74 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 74 of the Complaint state legal conclusions, no response is required.

75. Defendant denies the allegations in Paragraph 75 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 75 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 75 of the Complaint state legal conclusions, no response is required.

76. Defendant denies the allegations in Paragraph 76 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 76 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 76 of the Complaint state legal conclusions, no response is required.

77. Defendant denies the allegations in Paragraph 77 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 77 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 77 of the Complaint state legal conclusions, no response is required.

78. Defendant denies the allegations in Paragraph 78 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 78 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 78 of the Complaint state legal conclusions, no response is required.

79. Defendant denies the allegations in Paragraph 79 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 79 of the Complaint asserting allegations against other

defendants. To the extent the allegations in Paragraph 79 of the Complaint state legal conclusions, no response is required.

80. Defendant denies the allegations in Paragraph 80 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 80 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 80 of the Complaint state legal conclusions, no response is required.

81. Defendant denies the allegations in Paragraph 81 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 81 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 81 of the Complaint state legal conclusions, no response is required.

82. Defendant denies the allegations in Paragraph 82 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 82 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 82 of the Complaint state legal conclusions, no response is required.

83. Defendant denies the allegations in Paragraph 83 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 83 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 83 of the Complaint state legal conclusions, no response is required.

Count Seven
Violation of Debtor-Creditor Law

84. Defendant repeats and realleges the same responses to the enumerated allegations contained in the above paragraphs of the Complaint, and incorporates them with the same force and effect as if set forth specifically herein.

85. Defendant denies the allegations in Paragraph 85 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 85 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 85 of the Complaint state legal conclusions, no response is required.

86. Defendant denies the allegations in Paragraph 86 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 86 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 86 of the Complaint state legal conclusions, no response is required.

87. Defendant denies the allegations in Paragraph 87 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 87 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 87 of the Complaint state legal conclusions, no response is required.

88. Defendant denies the allegations in Paragraph 88 of the Complaint to the extent that Plaintiff asserts any allegations against Defendant, and is without information sufficient to form a response to the allegations in Paragraph 88 of the Complaint asserting allegations against other defendants. To the extent the allegations in Paragraph 88 of the Complaint state legal conclusions, no response is required.

WHEREFORE, Defendant Wells Fargo Bank, N.A. demands judgment in its favor dismissing the claims against it, awarding it attorneys' fees and costs incurred in defending the claims, and for such other and further relief as the Court deems appropriate and just.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint fails to state any claim upon which relief may be granted against Defendant.
2. Plaintiff's claims are time-barred by the applicable statutes of limitations and statutes of repose.
3. Plaintiff's causes of action against Defendant must be dismissed based on the documentary evidence.
4. The claims pled by Plaintiff assume legal requirements or obligations in excess of or contrary to what is required under the law, and therefore, the Complaint has not pled any actionable conduct by Defendant.
5. Plaintiff's claims are barred by the doctrine of laches.
6. Plaintiff's claims are barred by the terms of the contracts at issue.
7. Plaintiff's Complaint is barred by the doctrines of waiver, ratification, unclean hands, and estoppel.
8. Plaintiff's claims are barred by accord and satisfaction.
9. Plaintiff's claims are barred under the statute of frauds.
10. Any damages allegedly suffered by Plaintiff were caused by the acts or omissions of persons or entities other than Defendant, over whom Defendant exercised no control and for whose conduct Defendant is not liable.

11. The damages allegedly suffered by Plaintiff were not the proximate or foreseeable result of acts or omissions of Defendant.
12. Plaintiff failed to mitigate any damages that it may have suffered.
13. Plaintiff has failed to allege any duty owed to it by Defendant, or a breach of a duty owed, and in fact Defendant does not owe Plaintiff any duty, contractual, fiduciary, or otherwise.
14. Defendant engaged in no conduct with intent to defraud or harm Plaintiff.
15. Defendant is not subject to the statutes that give rise to the causes of action.
16. Defendant reserves the right to assert additional defenses and/or amend, supplement, alter and change its Answer either as of right as allowed by Court Rules, or based upon information learned or developed during discovery or investigation in connection with this action.

CROSS-CLAIM FOR INDEMNITY AGAINST CO-DEFENDANTS

1. In the event Defendant is found to be liable to Plaintiff or experiences any loss as a consequence of the allegations set forth in Plaintiff's Complaint, Defendant is entitled to indemnification from defendant L.J. Marchese Chevrolet, Inc., pursuant to contractual agreements between Defendant and L.J. Marchese Chevrolet, Inc., and L.J. Marchese Chevrolet, Inc.'s breach thereof.

2. In the event Defendant is found to be liable to Plaintiff or experiences any loss as a consequence of the allegations set forth in Plaintiff's Complaint, Defendant is entitled to indemnification from defendant L.J. Marchese Chevrolet, Inc., 26 Motors Corp., and Michele Bailey, as a matter of law.

WHEREFORE, Defendant Wells Fargo Bank, N.A. demands judgment in its favor dismissing the claims against it, awarding it attorneys' fees and costs incurred in defending the

claims, indemnification by its co-defendants from any liability, and for such other and further relief as the Court deems appropriate and just.

Dated: September 18, 2023

REED SMITH LLP

/s/ David G. Murphy
David G. Murphy, Esq.
Diane A Bettino, Esq.
599 Lexington Avenue, 22nd Floor
New York, New York 10022
Tel. (212) 521-5400
Fax (212) 521-5450
dmurphy@reedsmit.com
Counsel for Defendant
Wells Fargo Bank, N.A.

CERTIFICATE OF SERVICE

I hereby certify that on this date, September 18, 2023, the document titled Wells Fargo Bank, N.A.'s Answer, Affirmative Defenses, and Crossclaim was filed with the Court via ECF, and that all counsel of record were contemporaneously served via ECF.

Dated: September 18, 2023

REED SMITH LLP

/s/ David G. Murphy
David G. Murphy, Esq.
Diane A Bettino, Esq.
599 Lexington Avenue, 22nd Floor
New York, New York 10022
Tel. (212) 521-5400
Fax (212) 521-5450
dmurphy@reedsmitllp.com
Counsel for Defendant
Wells Fargo Bank, N.A.